

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council meeting jointly with Housing Authority & Successor Agency to the former Redevelopment Agency
Date: Tuesday, February 21, 2017
Time: 6:00 PM Closed Session / 7:00 PM Open
Location: Council Chambers, Milpitas City Hall, 455 East Calaveras Blvd., Milpitas

CALL TO ORDER Mayor Tran called the joint meeting to order at 6:00 PM. City Clerk Mary Lavelle called the roll.

PRESENT: Mayor Tran, Vice Mayor Grilli, Councilmembers Nuñez and Phan

ABSENT: Councilmember Barbadillo was absent at roll call. He arrived for Closed Session. He was present at the open session of the meeting until 11:02 PM and was absent for the remainder.

Vice Mayor Grilli participated by telephone conference from New Orleans, LA. She departed the meeting at 11:15 PM.

CLOSED SESSION City Council convened in Closed Session to discuss two potential litigation matters, as listed on the agenda.

City Council then convened in Open Session at 7:00 PM.

ANNOUNCEMENT No announcement out of closed session.

PLEDGE Boy Scouts Troop No. 92 led the pledge of allegiance.

INVOCATION Councilmember Nuñez requested a moment of silence for the fallen police officer in Whittier, CA. He invited Pastor Anup Daniel from Rock of Salvation Church to provide the invocation.

SCHEDULE OF MEETINGS Council reviewed the Council Calendars/Schedule of Meetings for February and March 2017.

City Manager Tom Williams noted that the February 27, 2017 meeting of the Council's Ad Hoc Subcommittee on Marijuana would be moved to Monday, March 6 at 5:00 PM.

PRESENTATIONS Presentations were made, as follows.

Mr. Dale K. Thomure, Manager of Community Hazard Mitigation with the Insurance Services Office presented a plaque to the Milpitas Building Department staff for exemplary commitment to building code enforcement, and reaching Classification 1, the highest possible ISO rating in the state that only a handful of cities achieved in California. Chief Building Official Keyvan Irannejad, along with three Building Inspectors, accepted the plaque.

Mayor Tran recognized winners of the first Martin Luther King Jr. "I Have a Dream" essay contest: Grace Zodiactal, Anjali Nair, Ethan Maruyama and Yugam Satija. All were welcomed to a short reception in the second floor lobby with the contest winners, 2nd and 3rd place essay writers and their families.

PUBLIC FORUM Tom Valore, Milpitas resident, requested to remove agenda item 18 (minimum wage ordinance) from the consent calendar.

Cherisse Lebron, from the Santa Clara Valley Water District, requested to remove item no. 21 (resolution related to water rate increase) from the consent calendar.

Rob Means, 1421 Yellowstone resident, read an article from a magazine, dealing with earth, planet, humanity and trashing the planet. Global warming was the issue, with temperatures increasing across the planet.

Jessica Lynum, representing Milpitas members of the California Restaurant Association, requested to remove item no. 18 (minimum wage ordinance) from the consent calendar.

Robert Marini, Milpitas resident, spoke of his attendance at the Citizens Task Force on water rates where he felt City Manager Tom Williams was disruptive at that meeting, answering questions that were not directed to him.

Voltaire Montemayor, Milpitas resident, was recently at SummitPointe and went to Ed Levin Park where lots of water was in the reservoir. He commended the Building Department.

Liz Ainsworth, Milpitas resident, requested to remove item no. 18 (minimum wage) from the consent calendar. She wanted clarity on the Task Force also and it was in a fact finding process just now.

Steve Seddell, Milpitas resident, stated the greatest thing business could provide for security was cameras to thwart repeat criminal activity. There was a need for entire spaces to be covered by cameras installed.

Michael Tsai, Milpitas resident, reported on The Pines parking situation. He thanked Council member Nuñez for meeting with Starlite Pines HOA. A planned tour got postponed due to rain. He referred to a tragic carjacking and murder at Ilara Apartments, a crime so unusual in Milpitas, where there was a need to take steps to keep the community safe. An increase in police officers would help.

ANNOUNCEMENTS

City Manager Williams reported the recent great work of city staff from Public Works, Police, Recreation and others who had been monitoring creeks, improvements in a pump station, and keeping creeks in check with no flooding occurring over the last weekend after the big rains.

Councilmember Phan stated for next month that he would like to discuss a wage theft ordinance to make businesses accountable. He requested four hours of staff time on how to support non-profits. After attending the recent Chamber of Commerce crab feed, he wanted to know how to support the Chamber and educational foundations. He also wanted to pursue translation services at Council meetings, for those for whom English was not their first language.

Councilmember Nuñez wanted to go back to the previous meeting about setting priorities, to set those and return to Council. Three issues were deemed priorities that were not agreed to as priorities by the whole Council, and he just heard three more from Mr. Phan. He'd like to have planning sessions out of the way before agreeing to the items that his colleague asked for, while they needed agreement and priority setting first.

City Attorney Chris Diaz responded, stating the next priority setting meeting was scheduled for March 1. Council could hold off on discussing until that date, and then could add Councilmember Phan's items after that.

Councilmember Phan would agree to that. Mr. Nuñez said, for him, this was a process and he wanted to finish the discussion on what was important. Mr. Phan asked again about how to get an item on the agenda. Mayor Tran commented on this process and discussion. Councilmember Nuñez had been holding back on his items he'd like on a Council agenda, due to wanting to go through a process. He was quite willing to bring his issues forward.

Vice Mayor Grilli reminded the group that as a Council, they agreed to have a goal setting meeting, and to prioritize items and then focus on those. Council had not yet had that conversation and they needed to do that. Each cannot do this work alone, as they need to do it as a Council. Mr. Diaz again urged the Council to continue this conversation to March 1.

Councilmember Phan noted that items on the agenda that he had asked for were not voting to take any action but rather for discussion only. He felt they would be talking about long-term goals, while his items on the agenda were not those that could be accomplished right away.

Mayor Tran felt the process that City Council had was limiting. He said that Council had not done enough for the people in 77 days. Processes were inefficient and limiting. What if he had a great policy idea and wanted to pursue it, he asked.

Mr. Diaz again urged the officials to stop conversation and to continue this subject and conversation to the meeting on March 1.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. None were reported.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda for February 21, 2017, with one change

Councilmember Barbadillo requested to move agenda item no. 3 (nepotism policy) to the consent calendar.

Motion/Second: Councilmember Nuñez/Mayor Tran

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the consent calendar for February 21, 2017, as amended

Councilmember Nuñez requested to remove items no. 18 (minimum wage ordinance) and no. 21 (resolution opposing wholesale water rate increases) and Mayor Tran requested to remove agenda item no. 4 (printing services contract) from consent.

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 5
NOES: 0

MEETING MINUTES

Motion: to approve the City Council meeting minutes for January 24 and February 7, 2017

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

Motion carried by a vote of: AYES: 5
NOES: 0

- * 3. Nepotism Policy Received information on the nepotism policy for City of Milpitas.
- * 6. Mayor Appointment Per recommendation of Mayor Tran, appointed resident Jennifer Strohfus to the Milpitas Citizens Task Force on Water Rates.
- *10. Cesar Chavez Plaza Approved the naming of Cesar Chavez Plaza at the former Veterans Plaza site and approved a budget appropriation of an amount not to exceed \$9,100.
- *11. Scholarship Program Approved Arts Commission recommendation for the allocation of funds in the amount of \$2,000 from the Council's Unallocated Community Promotions Budget for Arts Commissioner Larry Voellger Arts Scholarship.
- *13. Financial Status Received financial status report for the six months ended December 31, 2016.

- *14. Remove PRCRC Member Removed Alternate No. 1 Samu Tiumalu on the Recycling and Source Reduction Advisory Commission, creating one vacancy with a term that would expire in June 2018.
- *15. State Grant for Police Accepted the Board of State and Community Corrections (BSCC) City Law Enforcement Grant in the amount of \$108,568.32 to be utilized on identified police programs. Approved a budget appropriation in the amount of \$108,568.32 into the Police Department's operating budget.
- *16. Ordinance No. 38.827 Waived the second reading and adopted Ordinance No. 38.827 for amendments to zoning regulation related to places of assembly.
- *17. Ordinance No. 38.828 Waived the second reading and adopted Ordinance No. 38.828 amending Mixed-Use zoning regulation.
- *19. Resolution Adopted Resolution No. 8645 authorizing the purchase of one Caterpillar Backhoe Tractor and Attachments from Peterson Caterpillar through a cooperative agreement pursuant to Milpitas Municipal Code Section I-2-3.08 in the amount of \$161,000.
- *20. Resolution Adopted Resolution No. 8646 in support of authorizing the implementation of Upper Berryessa Creek Risk Management Project without the proposed waste discharge requirements.
- *22. Amendment No. 8 to Agreement Schaaf & Wheeler Approved Amendment No. 8 to the Consultant Agreement with Schaaf & Wheeler to extend the term to March 1, 2018 for Storm Drain/Stormwater Program Documentation Review for the Silicon Valley Rapid Transit (BART) Program Berryessa Extension, Project No. 4265
- *23. Agreement with IBI Group for McCandless Park Design Approved and authorized the City Manager to execute an agreement with the IBI Group Architecture Planning, in the amount of \$544,994 for Project No. 5102 as specified subject to approval as to form by the City Attorney. Approved a budget appropriation in the amount of \$400,000 from the TASP Impact Fees into Project No. 5102.
- *24. Amendment No. with Mott McDonald LLC Approved and authorized the City Manager to execute Amendment No. 5 to the consulting services agreement with Mott MacDonald, LLC to increase compensation in the additional amount of \$210,000 associated with land development projects.
- *25. Amendment to Agreement with Liebert Cassidy Approved Amendment No. 1 to the agreement with the law firm of Liebert Cassidy Whitmore.
- *26. Amendment with Richard De La Rosa, Forest Consulting HOUSING AUTHORITY & SUCCESSOR AGENCY: Directed staff to proceed with Amendment No. 2 to the agreement with Richard E. De La Rosa doing business as Forest Consulting LLC in an amount not-to-exceed \$50,000 for services related to the Successor Agency to the former Redevelopment Agency and the Milpitas Housing Authority.
- *27. Invoice for Election Authorized payment in the amount of \$183,622 to the County of Santa Clara Registrar of Voters for its services for the November 8, 2016 election.

PUBLIC HEARING

- 1. Ordinance No. 291.1 City Attorney Chris Diaz explained that the last ordinance to prohibit any action on marijuana regulation was adopted and effective for only for 45 days, so staff's request at this meeting was to ask City Council to extend the temporary moratorium on marijuana uses for one year and 15 days. A City Council subcommittee met once and would meet again in March to form recommendations and return to Council with recommendations for adoption of more permanent policy on this topic.

Mayor Tran opened the public hearing.

Voltaire Montemayor, resident, said those in the City did not want marijuana or drugs in the City at all.

Robert Marini, resident, noted that some doctors prescribed marijuana to help patients, while Milpitas did not allow even one store to distribute it for doctor-prescribed use.

Michael Tsai, resident, urged City Council to try to keep the door closed for marijuana 100% or close to it. He did not think it was unreasonable to drive to San Jose to get marijuana, where it was more openly available. He wanted to maintain a safe environment for kids, schools and families. Marijuana use attracted crime, he believed.

Councilmember Phan stated that the purpose of the urgency ordinance was to get more time to work on the formal policy on marijuana. He encouraged citizens to attend the ad hoc Council Subcommittee meeting on March 6.

Steve Seddell, resident, talked about a song from 50 years ago. Mass cultivation of marijuana was now possible. The city needed to further study this issue and come up with the best environment for the community.

Rob Means, 1421 Yellowstone resident, objected to marijuana being called “a gateway drug.” Maybe the city should get rid of all the liquor stores in town, as it was much more dangerous to a community than marijuana use.

Kurt Bohan, resident, remarked on the timeline of a year and a half (identified by the City Attorney). He agreed with Rob Means on the timeline extension being too long.

(1) Motion: to close the public hearing, following six speakers

Motion/Second: Councilmember Nuñez/Mayor Tran

Motion carried by a vote of: AYES: 5
NOES: 0

Councilmember Phan welcomed dissent and encouraged all to come and share views at the Subcommittee. The urgency ordinance was set for ten months and 15 days timeframe, and then the Council could revoke the current ordinance to adopt a new one. All issues needed to be laid out.

Councilmember Nuñez agreed with most of what was said. Council was looking for input on the permanent ordinance to be developed as policy. He acknowledged that uses of marijuana were more than just recreational.

Mayor Tran said this was a pivotal time in history on this issue in USA and in Milpitas. He reported that January 1, 2018 was the date when recreational marijuana would be available in the state.

City Attorney Diaz referred to a need for regulation about commercial use and preparation of marijuana since current state law allows cultivation indoors in private residences.

Next, the City Attorney read aloud the title of the Ordinance, “An Uncodified Interim Urgency Ordinance of the City Council of the City of Milpitas Enacted Pursuant to California Government Code Section 65858 Extending for a Period of Ten (10) Months and Fifteen (15) Days the Temporary Moratorium on Marijuana Uses Pending the Enactment of an Update to the City’s Municipal Code.”

(2) Motion: to waive the reading beyond the title and adopt Interim Urgency Ordinance No. 291.1, extending the temporary moratorium on marijuana uses pending enactment of an update to the City’s Municipal Code

Motion/Second:

Councilmember Nuñez/Mayor Tran

Motion carried by a vote of:

AYES: 5

NOES: 0

Mayor Tran said he would move agenda item No. 18 (minimum wage ordinance) to be heard next. Councilmember Nuñez supported the Mayor's request and also asked for agenda item no. 21 (resolution opposing water rate increases) to be heard earlier, prior to Unfinished Business.

UNFINISHED BUSINESS

2. MCTV Channel 26

Information Services Director Mike Luu gave a report on status of Milpitas Community Television, Channel 26 providing history of the station, funding from Comcast, and the establishment of the non-profit organization. Staff recommended going out for a new Request for Proposals (RFP) for a 501(c)3 nonprofit to manage the studio and Channel 26 focusing on educational training programming.

Mayor Tran asked about MCTV and its submitting of RFP. Mr. Luu replied on its terms that did not meet the criteria of the RFP – for example, asking for City staff support.

Councilmember Nuñez liked the staff recommendation. He had knowledge of nearby educational institutions that ran television channels for public benefit. He urged a look at opportunity for those potentially.

Speakers:

Kurt Bohan, resident, supported the RFP. The city needed to have a flexible approach to it; if standards were too high, it did not work. The RFP must be fairly judged. He stated some of his ideas on the operation of the channel.

Robert Marini, resident, commented on the 501(c)3 non-profit and that it did not mean that the channel cannot sell products on television. Additional information could be provided about services and could make the channel profitable that way.

Motion: to receive a staff report on the responses to the RFP and direct staff to proceed with a new RFP for a 501(c)3 nonprofit to manage the public access television studio and channel 26, focusing on educational training programming

Motion/Second:

Councilmember Nuñez/Mayor Tran

Motion carried by a vote of:

AYES: 3

ABSENT: 2 (Barbadillo, Grilli)

Councilmember Grilli had ended her phone call to the Council Chambers at 11:15 PM.

4. Printing Services

Mayor Tran had removed this item from consent and addressed the contract amendment, asking questions about the cost and dollars for the new amendment to the city's existing contract with JP Graphics. He wanted some details on the information in the staff report and acting Finance Director Jane Corpus responded.

Councilmember Nuñez left the dais at 11:38 PM.

Mayor Tran commented on the need for so much more printed material, when the city was in the age of the internet and more use of social media.

Councilmember Phan left the dais at 11:40 PM. Since there was no quorum, the meeting was temporarily stopped awaiting a quorum to return to the dais.

Councilmembers Phan and Nuñez returned at 11:42 PM and the meeting resumed.

In reply to the Mayor, staff reported that the largest volume of outreach to residents was from the Utility Engineering department. Other uses of the printing company were identified regarding mailings to residents, for a variety of printed material.

Mayor Tran had a lot of questions for staff, about the reason why costs nearly doubled for the printed material. He wanted the contract for printing not to go over \$1 million.

Motions: to receive staff report on in-house versus contracted printing services and approve Amendment No. 3 to the Agreement with JP Graphics, Inc. for city-wide printing services, increasing the annual maximum compensation amount by \$20,000 for contract years three through five, resulting in a five-year total maximum amount of \$780,010

Motion/Second: Councilmember Nuñez/Mayor Tran

Motion carried by a vote of: AYES: 3
NOES: 0
ABSENT: 2 (Barbadillo, Grilli)

Public comment: Robert Marini, resident, said all that was mailed out did not have to be multi-color notices since that increased the cost. He said that many notifications should be sent out by e-mail only, to save on printing and mailing costs.

5. Ordinance No. 43.212

This was the last matter for discussion at the Council meeting.

The City Attorney stated that because it was a proposed urgency ordinance, it would require a 4/5 vote of Council for adoption. It therefore would need to be continued because at that time, only three Councilmembers were present. The Mayor asked staff to try to call Vice Mayor Grilli.

At 1:00 AM, Mayor Tran invited speakers to the podium.

Resident Mr. Sun, from the neighborhood, reported following a meeting that local residents held on the parking issue near Bob McGuire Park. Residents wanted the City to prevent foreseeable parking difficulties in all the high density developments, especially where they lived, in the Piper Montague subdistrict of the Transit Area Specific Plan. He had a list of concerns and had prepared a power point of those. He tried to send his list to the City Council by e-mail.

Due to a need for 4/5 vote on the urgency ordinance, and with not enough Councilmembers present, this matter was postponed for a vote to the next regular meeting.

REPORTS OF OFFICERS & COMMISSIONS

7. Charter City

This item was not heard and was continued to a future Council meeting.

8. Flag Policy

Councilmember Phan asked to defer items no. 7 (charter city) and no. 9 (sanctuary city) to the priority setting meeting, and that was agreed to by the Mayor and Vice Mayor.

The flag in question was the socialist flag of the Republic of Vietnam, and Mr. Phan commented on the history of that country, and the flag as related to communism. This issue was pertinent now in Milpitas, with significant population living in the City from Vietnam. For the Vietnamese American community in Milpitas, most came from refugee backgrounds and were affected by the Vietnam war.

Mr. Phan wanted to amend the flag policy to deem one a public nuisance, if there were public health risks or provoke violence or rioting, and so then not to allow flying that flag. He wanted to defer to public comments, before getting further on this topic.

Councilmember Nuñez was all for public comments. He wanted to fully understand the goal described by Mr. Phan.

Councilmember Phan wanted to ban flags deemed public nuisance. In the future, hold a public hearing to determine if the socialist flag was a nuisance, and thus ban it. Also he wished to recognize the Vietnamese Heritage and Freedom Flag (yellow with 3 stripes) be recognized as the official flag of the Vietnamese American community.

Vice Mayor Grilli was confused on direction. A process was developed in the past by the Council and the public to come up with the flag policy currently in place. She wanted to follow the same process as was done before, involving the public in this conversation.

Mr. Phan referred to community members in the audience. At this meeting was the start of the conversation and he was asking to get this on a future meeting agenda.

Mayor Tran noted that the last time this was brought up was before he and Mr. Phan could vote on it. This was important to bring back up in this community. He had been listening to families in Milpitas when campaigning.

City Attorney Chris Diaz explained current policy in the Milpitas Municipal Code and the requirement for a public hearing. When allowing a flag to fly after a hearing, that limited any first amendment rights restriction.

The Mayor invited speakers from the audience.

Robert Marini, resident, said to keep the general policy, to fly the American flag, and respect all veterans. Be fair to everybody. He was concerned about flying flags of other countries.

Vice Mayor Grilli remarked on current policy regarding ground level only – to fly flags of other countries. Flags of other countries were not flown by the City except when Sister Cities were visiting.

San Jose Councilman Tam Nguyen complimented City of Milpitas. He spoke of action 12 years ago to be the first City to recognize the Vietnamese heritage flag. Council could hear from the residents on how they feel about this issue when it was on the agenda.

Vivian Huynh, Milpitas high school student, spoke on behalf of youth in Milpitas. She said youth and Vietnamese American community supported the Freedom Heritage flag and what it stood for.

Steve Seddell, resident, referred to 1960s, history of communist regimes, population of Vietnam today, and the matter of blanketly condemning one country he had questioned.

Ha Phan, resident of 30 years in Milpitas and on Library Advisory Commission for ten years, agreed with values of the City including freedom, democracy and human rights.

A woman, Tin Cao, resident of San Jose, spoke of international human rights and Amnesty International. A report came out every year with reports of violations of basic human rights in Vietnam currently. It was an act of provocation when the red flag would be flown in the U.S.

Long Tran, lived in Silicon Valley, spoke of his own past in Vietnam and bad treatment of its people by the government. He requested to ban the red flag of the communists.

Tran Nguyen, representing Vietnamese residents of northern California, spoke of persons who died and the red flag of the communists. Do not allow the communists to be supported in any way.

Voltaire Montemayor, resident, spoke of the Philippines and history and flag of Vietnam.

Michael Tsai, resident, addressed democracy and listening to all people. Healthy discussion was needed. One idea was to have a blanket policy on flags of other nations while maintaining democratic traditions.

Kurt Bohan, resident, said this was kind of emotional, as he recalled history at end of the Vietnam war. The city could have one day a year, annually marking the day when the last helicopter left the U.S. embassy in Vietnam, and fly the democratic flag in order not to forget that war and its impact.

Councilmember Phan thanked all those who came to speak. He spoke in Vietnamese language to address those residents and speakers.* Following speaking in Vietnamese, he spoke of Vietnamese people in the audience and in the Milpitas community, and thanked the community for coming to City Hall and providing comments. He was sensitive to the community and was glad they could enlighten his colleagues.

Mr. Phan asked the City Attorney what options could be pursued going forward. Mr. Diaz said if the desire was for something different, he could look at applying strict scrutiny and prohibit all ground level ceremonies across the board; Council might consider amending the municipal code as to current rules; or, a simple resolution to memorialize a position without changing existing policy. The City Attorney's office would need to research further to avoid legal challenges.

Councilmember Nuñez would like to know the process on how the City got to the current policy. He spoke of a ceremony at the County twice a year and at the City of San Jose for flag raising for Black History Month. Maybe Milpitas could honor the Vietnamese History flag at an event here in Milpitas as a more positive way to approach it.

Mayor Tran liked the great positive intentions, and maybe Council could take the policy a lot further. He recommended to change the policy to open it to all countries that stand for freedom and justice, United Nations, and on April 30 he would like to fly the flag that was discussed at the meeting. He wanted to open up the flag policy. Filipino Independence Day was another example. Fly other nations' flags together with the American flag, including e.g. the Mexican flag.

Motion: to ask City staff to conduct research on flag policy, to determine how to move forward; if a Resolution was needed, then to work with the Council to get it forwarded to City Council at a future meeting

Motion/Second: Councilmember Phan/Councilmember Nuñez

Councilmember Phan did want to discuss the banning of the socialist flag of Vietnam.

Mayor Tran said he wanted staff to research and bring back a policy of opening up flag policy for the flag poles to fly flags of other nations that stand for freedom and justice, such as the Philippines flag. Maybe Mexican Independence Day and of other nations. He supported Mr. Phan about banning the communist flag of Vietnam.

The City Attorney responded again with options staff could pursue, upon Council's direction.

Councilmember Barbadillo departed the meeting at 11:02 PM.

Councilmember Phan asked City staff to conduct research as to how to move forward with community needs and wants. His suggestions may or may not be included in a resolution to recognize Vietnamese Heritage and Freedom flag in Milpitas, to prohibit display of flags if they are deemed a public nuisance (research the definition), and in the future hold

a public hearing to determine if the socialist flag was a public nuisance. He sought the opportunity to prohibit it.

He made a motion to direct city staff to look into these issues and come back with proposal to move forward.

Councilmember Nuñez felt the current policy may provide all the authority needed to City Council. Other concerns might arise, when identifying flags of other countries.

City Manager Williams suggested to bring back a resolution to recognize the yellow and red flag. No research was needed. For determining a nuisance, that was up to City Council to determine. Allowing any flag deemed appropriate to fly on City flag poles, could be an easy amendment to the code and he wanted to be efficient so staff needed clear direction from City Council.

Motion: to ask city staff to conduct appropriate research as to how to move forward with the community's needs and minds, to recognize by resolution the Vietnamese Heritage and Freedom Flag as the official flag of the Vietnamese community in Milpitas (golden with three red stripes), and bring that back to a future Council meeting

Councilmember Phan continued to describe his motion, to additionally include: to prohibit the display of flags at ground level or above if deemed a public nuisance and to research that. In future, if recommended, hold a public hearing to determine if the socialist flag was a public nuisance. Any other flag if it caused significant harm to the public interest, such as mental health risks, then Council should have an opportunity to prohibit that (for example, the Nazi flag). His comments on this second idea were heard, but not included in the adopted motion. Motion regarded the resolution and first research request only.

Motion/Second: Councilmember Phan/Vice Mayor Grilli

Motion carried by a vote of: AYES: 4
ABSENT: 1 (Barbadillo)

City Manager Williams responded to the City Council that this matter (Resolution of support) could be brought back soon. The second item requesting a possible ordinance to amend the Municipal Code would require research and clear direction from the Council to amend the policy about flag policy and changes sought.

Motion: to direct City Attorney to research policy and bring back to Council a policy to amend current ordinance (Municipal Code) for flying flags of other nations that stand for freedom and justice, with discretion, and fly on any flag poles

City Attorney Diaz warned the City Council of constitutional issues if allowing flags of nations that the City may disagree with.

Vice Mayor Grilli recommended to involve the Veterans Commission in the changes that would be recommended and should be involved in what this would look like.

Councilmember Phan agreed with the Vice Mayor. He wanted to clarify that when staff came back with language, to include in research language to allow Council to be able not to recognize socialist flag of Vietnam.

Councilmember Nuñez said this was not his understanding. Stay on the positive side and not negative. He urged opening up the process to more than the Veterans Commission, such as Sister Cities and Community Advisory Commissions to advise Council on the flag policy. Get as much of the community represented as possible, he urged, and Mayor Tran agreed.

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of:

AYES: 4
ABSENT: 1 (Barbadillo)

**9. Sanctuary City Status and
Oppose Travel Ban**

This item was not heard and was deferred to the meeting of March 1.

NEW BUSINESS

12. International BBQ

City Manager Williams said that staff was ready for questions from City Council regarding support for the Chamber of Commerce's annual International Barbecue event.

Mayor Tran asked Liz Ainsworth, President of the Milpitas Chamber and Chair of the event for 2017, to come to the podium and explain answers to questions that City staff had given to the Chamber.

Mr. Williams reported that the City offered staff time and resources, and waiving all fee costs for building, planning, fire and police, and the use of public works staff estimated at \$18,000 per year for the BBQ event in May. No reimbursement was provided.

Councilmember Phan wanted to know how that process was going this year and what challenges the Chamber was experiencing. He asked Ms. Ainsworth how the City Council could support the event.

Ms. Ainsworth identified the history in past of this event, and its fundraising purpose. She explained the genesis of new barbecue festival over the last three years. The biggest issue was applying for permits, with the need to submit a scaled map. She wanted to work with the City on I-880 billboard and on the lighted sign out in front of City Hall. She reported having a smaller committee working with this year.

To respond to Councilmember Nuñez, Liz Ainsworth replied that profit was low last year for the amount of work put in. She projected \$25,000 in income for the event this year.

Councilmember Nuñez discussed the concept of sponsor versus partner in the event, and wanted to understand the difference for the BBQ event.

Mayor Tran said that if the City did not participate financially, it looked like the event was not going to happen. He noted a decline in the event over the past few years and feedback he got from the community was not great. He was not satisfied with what this event did for the community.

Councilmember Phan said it was good that the Chamber was reaching out for help. The City could do its fair share to support it. The city could promote the event a lot more, as a partner. Support that effort, with a little to go a long way.

Councilmember Nuñez, having worked the event twice, felt it was worth it to support. He also agreed with the Mayor that it was trending down. Maybe re-think the event this year.

Councilmember Phan said the City was co-sponsoring the event, and it was not always about the event's profit. It was about people not profit. Otherwise, just have a third party event to come in to raise revenue. Foster this day of celebration in Milpitas.

Mayor Tran asked the Chamber representative if \$18,000 would be enough for the co-sponsorship by the City. Ms. Ainsworth said if it's enough for the City permits and staff help, then it would be.

Councilmember Nuñez felt a partnership was the best way to participate with this event.

The City Manager proposed a way forward in future years in which the City partnered effectively with the Chamber to make the event a success for all in the community.

Mayor Tran invited speakers.

Tom Valore, Milpitas resident, had worked on this festival and the Art & Wine Festival for many years in the past, and the event was to be a major input for financial resources for the Chamber. No other event would have potential for this amount of income. In the past, as in other places, it was conducted in the center of the city. They needed help with this event to make it more integrated, as they do in every other city. The Chamber should not ask the City for anything other than help from services. Chamber should continue to manage the event in that fashion.

The Mayor then asked staff what was the City Council to decide on. The City Manager replied that no request had been received yet from the Chamber for this year. This report was preparation for what was anticipated at a future Council meeting. Ms. Ainsworth said she was just starting to complete permit applications and wanted to come before City Council on March 21, to seek partnership and fee waivers.

Returning to an earlier matter, the City Attorney asked the City Council to clarify and memorialize precisely to which meeting date it was going to postpone agenda Items No. 7 (charter city) and No. 9 (Sanctuary City and oppose travel ban).

On a vote of three in favor, the Council approved moving those two to the March 1, 2017 Special Meeting agenda.

At 12:51 AM, Mayor Tran said the City Council would take a break. Staff was attempting to have one City Councilmember return to Council Chambers so that at least four Councilmembers could be present to consider a vote on the urgency ordinance.

Then, Councilmember Nuñez departed the Chambers at the break time. At this point, there were only two Councilmembers remaining, due to the earlier departure of Councilmember Barbadillo and Vice Mayor Grilli by phone.

Councilmember Barbadillo returned to the dais at 12:59 PM and the Council then went to agenda item no. 5 (parking regulations ordinance).

ORDINANCES

18. Adopt Minimum Wage Ordinance No. 292

The City Manager and City Attorney reviewed prior steps taken before this meeting, when the Council was simply asked to adopt the ordinance as introduced at the last Council meeting, to raise the minimum wage in the City to \$15.00 per hour faster than state law would require.

Next, Mayor Tran invited public comments and limited speakers to one minute time.

Jessica Lylum, speaking for Milpitas members of California Restaurant Association, asked for current state law to be followed (raising the minimum wage to \$15 per hour by 2021). Her group's pleas had fallen on deaf ears, she believed.

Voltaire Montemayor, Milpitas resident, spoke of the right and the left. It was hard for restaurant workers to survive and wanted to encourage businesses to survive.

Liz Ainsworth, Milpitas resident, said there were disillusioned businesses in the City and felt they were not being heard. Many small businesses were already paying higher than minimum wage, but those who weren't yet would find it difficult to handle the new law and some people would get laid off.

Tim Howard, a Milpitas 42-year resident, 25 year business owner and a long time Commissioner, said this Council was rushing to get this new wage law implemented. He identified how difficult this was for small businesses in town. He felt the City Council was in a rush to do this while they need to work the process and learn how government was run.

David Earhausen, from South Bay Labor Council, applauded the Council for moving forward on the \$15.00 by 2019 as introduced at the last meeting.

Angela Tamayo, worked for Kaiser and a member of a union, was so proud to learn that the City Council planned to adopt the \$15 by 2019 law.

Jeremy Barousse, of Siren network in Santa Clara County, worked with small businesses, food and retail, who mostly hired low-wage workers. They need \$15 by 2019 to address this crisis which was fair and right for the community.

Alison Hicks, of Raise the Wage Coalition of Silicon Valley, first went to City of Mountain View which was the first to adopt \$15 by 2019. She urged Milpitas to join the rest of the cities in Silicon Valley.

Megan Fraley, of Raise the Wage Coalition of Silicon Valley, thanked the Council for action taken two weeks ago and urged adoption of the ordinance at this meeting.

Steve Seddell, Milpitas resident, said that businesses that compete with businesses elsewhere in the state could be put at a disadvantage when competing with those outside this area who have not accelerated wages.

Rob Means, 1421 Yellowstone, asked when the minimum wage was last raised. Working people had been behind the 8-ball for many years. Other cities had implemented new minimum wage and he wanted to support businesses that did pay a decent living wage.

Next, the Mayor next called for City Council comments.

Vice Mayor Grilli noted that prior Council did discuss this issue last year. She was proud that this issue was before the Council. It would help Milpitas families. She thanked Councilmember Phan who worked with her on the Subcommittee to discuss exemptions.

Councilmember Nuñez said to look at just the City itself. He heard it would impact summer employment at the City of Milpitas. The City Manager noted the minimum wage would impact Recreation Services summer employees, and about 80% of those would earn less than the new minimum wage. Councilmember Nuñez asked also about crossing guards in the Police Department (38 of those).

Councilmember Phan reported that while some exemptions to the proposed ordinance were initially considered, at the last Council meeting, those were not directed to be included in the ordinance at this meeting.

Motion: to waive the second reading and adopt Ordinance No. 292 to implement a minimum wage of \$15.00 per hour by July 1, 2019

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 5
NOES: 0

Mayor Tran commented after adoption, expressing his strong support for the new minimum wage to help folks meet basic needs.

City Manager Williams identified about a 4% increase in cost to the City's Recreation Services budget to incorporate the increased minimum wage for those employees paid a minimum wage.

RESOLUTIONS

21. Resolution Opposing Water Rate Increases

Public Works Director Nina Hawk presented information on slides regarding the request to adopt a resolution opposing future increases in the cost for wholesale water from the two providers to the City's water system. Approximately 60% of the City's potable water supply was from the San Francisco Public Utilities Commission (SFPUC) and remaining 40% from the Santa Clara Valley Water District (SCVWD). The SFPUC raised its wholesale water rate 81% from FY12 to FY16, while the District's rate had a 57% increase over the same years. Ms. Hawk described the "take or pay" provision for water contracts with the two agencies and displayed Wholesale Water Rate Future Projections, with anticipated increases over the next five fiscal years.

Councilmember Nuñez asked if either agency had put forward a proposal for a rate increase. Staff replied that SFPUC had not while SCVWD gave a projected number for its expected increase in costs. Ms. Hawk described the rate setting process needed for both districts, usually effective by July 1 (fiscal year start).

Vice Mayor Grilli said she was one who had asked for this to come forward. Council passed on the cost increases to ratepayers here in the City and residents now needed a vote on this topic. She felt the City Council owed it to residents to speak up ahead of time and make the City's voice heard at those districts.

Councilmember Barbadillo asked about rates as announced at a recent Santa Clara Valley Water Commission meeting, on which he served for the City of Milpitas.

Mayor Tran invited speakers from audience.

Cherisse Lebron, SCVWD staff, referred to a letter sent earlier this date to all Council members from the Board of Directors to ask the Council not to adopt the resolution. She expressed the information provided to justify the need for the District's rate increases. She encouraged all to attend an April 11 public hearing on rate increases.

Councilmember Nuñez asked her and Mr. Taylor from the District about the April 11 hearing, if that was the first chance to give comments. Mr. Taylor replied the meeting was open to everybody and the comment period was open until April 25.

Councilmember Barbadillo asked the District staff, in reference to the Water Commission meeting, the City did not have enough time to respond to the quick implementation of the new rates, if adopted, effective July 1, 2017. He expressed that it was too short a time frame for the City to be able to implement.

Councilmember Phan thought there was a lack of communication and suggested to participate in the process. This conversation should take place at rate setting hearing meetings. To be clear, he opposed a rate increase while there were different ways to approach it, and do so in a diplomatic manner.

Councilmember Nuñez noted they were only talking about months for this process. And, it was required for government officials to follow the process.

Speakers from the audience were invited to the podium.

Rob Means, Milpitas resident, said "taxes" had become a bad word for many years in California. Those paid for infrastructure and other public services. The SFPUC needed a large amount to update the Hetchy Hetchy system so he was okay with an increase to

water bill to pay toward that. But, he also heard the “Golden Spigot” name for the SCVWD. Water was critical, he said.

Voltaire Montemayor, Milpitas resident, spoke of low supply and demand. Overhead was included in wholesale water rates, along with repairs needed.

Tom Valore, Milpitas resident, did not like the idea of paying more for any product. He cared about quality and availability of water for residents. He urged everyone to assess water rates carefully as to that product provided by two wholesalers. Infrastructure was big issue around the country.

Robert Marini, Milpitas resident, was confused about these rates. Residents lost no matter what. He spoke of what was next at the Citizens Task Force on Water Rates.

Vice Mayor Grilli thanked Garry Barbadillo for his work on the Water Commission. She brought forward this resolution to have a voice for this City’s residents and customers, who had suffered greatly with increases over the past few years.

Councilmember Barbadillo commented further, stating his support of this action, with the City staying vocal to the two districts supplying the City’s water.

Michael Tsai, Milpitas resident, mentioned that the Mayor campaigned on wanting to keep water rates low and so this was a good time to take a look at the resolution. Ordinary folks were suffering, and higher water rates were difficult to absorb. He agreed with keeping any increases as low as possible while taking care of needed infrastructure improvements. He suggested auditing that agency (SCV Water District).

Motion: to adopt Resolution No. 8647 opposing an increase to the San Francisco Public Utilities Commission and the Santa Clara Valley Water District wholesale water rate

Motion/Second: Councilmember Barbadillo/Mayor Tran

Motion carried by a vote of: AYES: 3
NOES: 2 (Nuñez, Phan)

REPORT

Mayor Tran reported that he had attended the Veterans Commission recently. Commissioners made a plan of action, and he looked forward to some fantastic events by this Commission in 2017.

ADJOURNMENT

Mayor Tran adjourned the joint meeting at 1:07 AM on Wednesday, February 22, 2017.

The foregoing minutes were approved by Milpitas City Council on March 7, 2017.

Mary Lavelle
Milpitas City Clerk

* Below is a translation of remarks made by Councilmember Anthony Phan, when he addressed the audience in Vietnamese language, February 21, 2017

I want to thank the community for attending and providing public comments. I hope it has provided a sense of awareness to my colleagues on the council. It is an issue that is sensitive to the community. And I have encouraged the community to continue to participate in future discussions that relates to the community needs.

The flag is very important to the Vietnamese community. I also thank all people like my parents or anyone who fought under this flag for this freedom today and for future generations that can have a better life in USA. I also will not forget how people fought for it.

Once again, thanks for all of you who participated in this meeting. However next time I will bring this agenda first and you can go home early.